

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Ricky Lee Pottebaum,
individually and d/b/a Pottebaum
Construction and Powder River Log
Homes

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Steve M. Mihalchick, who appeared for Administrative Law Judge Kathleen D. Sheehy on May 5, 2006, at 1:30 p.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. The record closed at the conclusion of the prehearing conference.

Christopher M. Kaisershot, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared for the Department of Labor and Industry (the Department).

There was no appearance by the Respondent, Ricky Lee Pottebaum, Scanlan House Bed and Breakfast, 708 Parkway Avenue South, Lanesboro, MN 55949.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy Leppink, Director of Legal Services, Minnesota Department of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUES

The issues presented in this case are whether the Respondent is subject to discipline and/or civil penalties because:

(1) Respondent held himself out as a residential building contractor and/or residential remodeler on his business cards without a license or certificate of exemption and engaged in unlicensed residential building contractor and/or residential remodeler activities, in violation of Minn. Stat. §§ 326.84, subds. 1 and 1a, and 326.91, subd. 1(5) (2004);

(2) Respondent violated a Cease and Desist Order dated August 1, 2003, by continuing to hold himself out as a residential building contractor and/or remodeler, in violation of Minn. Stat. § 326.91, subd. 1(5), and 326.92, subd. 1a (2004).

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On January 11, 2006, the Commissioner of Commerce issued a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges (Notice and Order for Hearing) in this matter. The Department served the Notice and Order for Hearing on the Respondent by first-class mail on January 12, 2006, addressed to Ricky Lee Pottebaum, Powder River Log Homes, Scanlan House Bed and Breakfast, 708 Parkway Avenue South, Lanesboro, Mn 55949; Ricky Lee Pottebaum, Powder River Log Homes, 1030 5th Street, Oronoco, MN 55960; and Ricky Lee Pottebaum, Powder River Log Homes, RR #2, Box 237, Zumbro Falls, MN 55991.

2. The Prehearing Conference was scheduled to take place at 2:30 p.m. on February 15, 2006, at the Office of Administrative Hearings.

3. On February 15, 2006, the Department requested that the prehearing conference be continued because it believed the matter had been resolved. The prehearing conference was continued indefinitely.^[1]

4. On March 27, 2006, the Department requested that the prehearing conference be rescheduled because the Respondent had failed to sign and return the Consent Order proposed by the Department.

5. On March 27, 2006, the prehearing conference was rescheduled to take place at 1:30 p.m. on May 5, 2006.^[2]

6. The Notice and Order for Hearing contained the following language:

Respondent's failure to appear at the prehearing conference may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

7. The Respondent failed to appear for the prehearing conference on May 5, 2006, nor did he contact the Administrative Law Judge to seek a continuance. Because the Respondent failed to appear at the prehearing conference in this matter, he is in default.

8. Pursuant to Minn. R. 1400.6000, the allegations contained in the Statement of Charges at paragraphs 1-4 are hereby taken as true and incorporated into these Findings of Fact.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027, 326.91, subd. 4, and 326.92, subd. 3.

2. The Notice and Order for Hearing issued by the Department was proper, and the Department has fulfilled all relevant procedural requirements of law and rule.

3. The Respondent is in default. Pursuant to Minn. R. 1400.6000, the allegations contained in the Statement of Charges are hereby taken as true.

4. Respondent held himself out as a residential building contractor and/or residential remodeler without a license or certificate of exemption, and he engaged in unlicensed residential building contractor activity, in violation of Minn. Stat. § 326.84, subs. 1 and 1b, and 326.91, subd. 1(5) (2004).

5. Respondent violated the August 1, 2003, Cease and Desist Order by continuing to hold himself out as a residential building contractor and/or remodeler, in violation of Minn. Stat. § 326.91, subd. 1(5).^[3]

6. The imposition of discipline and/or civil penalties against the Respondent is in the public interest.

Based on the above Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Labor and Industry take disciplinary action and assess appropriate civil penalties against the Respondent.

Dated this 8th day of May, 2006.

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Default

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

^[1] Letter dated February 15, 2006, from Kathleen D. Sheehy to Christopher M. Kaisershot and Ricky Lee Pottebaum.

^[2] Letter dated March 27, 2006, from Kathleen D. Sheehy to Christopher M. Kaisershot and Ricky Lee Pottebaum.

^[3] The Department also alleged in Count II that the Respondent violated Minn. Stat. § 326.92, subd. 1, which provides that a person who is required to be licensed and who also engages in unlicensed building contractor work is guilty of a misdemeanor. Administrative Law Judges have no authority to adjudicate criminal offenses.